



Serial No.01
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Cr1.A. No. 30 of 2023

Date of CAV: 05.05.2026

Date of pronouncement: 18.05.2026

Rishan Marwein

...Appellant

- versus -

1. State of Meghalaya duly represented by the Chief Secretary, Government of Meghalaya, Shillong.
2. The Officer-in-Charge, Nongstoin Police Station, West Khasi Hills District, Meghalaya, Shillong.
3. The Investigating Officer, Nongstoin Police Station, West Khasi Hills District, Meghalaya, Shillong.
4. Smti. Banrihun Nongkhar (Complainant).
5. Miss XYZ (victim).

...Respondents

Coram:

Hon'ble Mrs. Justice Revati Mohite Dere, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr H.L. Shangreiso, Sr Adv. with
Ms M. Hajong, Adv.

For the Respondents : Mr R. Gurung, GA
Mr P.K. Shati, Adv. [for R4&5]

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes |



JUDGMENT: (per the Hon'ble, the Chief Justice)

By this appeal, the appellant has impugned the judgment and order dated 22nd September, 2023 passed by the learned Special Judge (POCSO), West Khasi Hills District, Nongstoin, in Special (POCSO) Case No. 30 of 2020, by which the learned Judge convicted and sentenced the appellant for the offence punishable under Section 6 of the POCSO Act, 2012 to suffer minimum imprisonment of 20 years with fine of ₹30, 000/-, in default of payment of fine, to undergo three months simple imprisonment.

The trial court in addition, in exercise of its power under Section 357A(2) read with Rule 9(2) of POCSO Rules, 2020, recommended compensation of ₹1,00,000/- to be paid to the child-survivor by the Meghalaya State Legal Services Authority, for her welfare and rehabilitation. Interim compensation, paid if any, was to be adjusted against the final compensation.

2. A few facts that are necessary to decide the aforesaid appeal are as under;



The appellant is the brother-in-law of the survivor, who at the relevant time was a minor, aged 16 years. It is the prosecution case that on 12th October, 2020, the appellant went to fetch the survivor from school at about 1 p.m., took her to a restaurant and committed rape on her at the restaurant toilet. The appellant is also alleged to have raped the survivor on 17th October, 2020 at his residence when his wife/family was away. The incident came to light on 18th October, 2020 when the survivor disclosed to her parents about the said two incidents. Pursuant thereto, an FIR was lodged by PW1 (sister of the survivor) with the Nongstoin Police Station, being P.S. Case No. 72(10) of 2020 as against the appellant, alleging offences punishable under Sections 5(l)(n)/6 of the POCSO Act, 2012.

During the course of investigation, the police recorded the statements of the family members of the accused and the survivor. The statement of the survivor was also recorded under Section 164 Cr.P.C. After investigation, charge-sheet was filed in the said case in the Court of the learned Special Judge (POCSO), West Khasi Hills District, Nongstoin.



Charge came to be framed as against the appellant under the provisions of the POCSO Act, to which he pleaded not guilty and claimed to be tried.

The prosecution in support of its case, examined the following witnesses;

PW1 – Wife of the appellant (accused) and sister of the survivor.

PW2 – Survivor

PW3 – Mother of the survivor.

PW4 – Dr Diamond Marwein, Medical and Health Officer.

PW5 – WP/SI, Nylla Eulalia Wanniang

The defence of the appellant was that of denial and, also of consent. The appellant's statement was recorded under Section 313 Cr.P.C. The appellant did not examine any witness in support of his defence.

After hearing the learned counsel appearing for the respective parties, the learned Special Judge (POCSO) convicted and sentenced the appellant as stated aforesaid vide judgment and order dated 22nd September, 2023. Hence, this appeal.



3. Mr H.L. Shangreiso, learned Senior Counsel for the appellant submitted that the evidence, as has come on record through various witnesses, when read as a whole, reveals that the relationship between the appellant and the survivor was a consensual relationship and that it was not a case of sexual assault. In support of his submission, learned Senior Counsel relied on the judgments of the Apex Court in ***The State of Uttar Pradesh v. Anurudh and another*** in ***Criminal Appeal @ SLP (Crl)10656 of 2025*** and ***Tolaram Relumal and another v. State of Bombay*** reported in ***(1954) 1 SCC 961***.

4. Mr R. Gurung, learned GA submitted that, no interference was warranted in the judgment and order dated 22nd September, 2023, convicting and sentencing the appellant. He submitted that the evidence on record would show that the appellant had clearly misused and abused his relationship with his sister-in-law (survivor), who was a minor, aged 16 years at the relevant time. He submitted that the appellant, at the relevant time was a married man with two children and as such, had abused his relationship and taken advantage of the survivor. He further



submitted that, the evidence would also show that the appellant had threatened the survivor not to disclose the incidents to any person. Learned GA submitted that, even otherwise, having regard to the statutory provisions under the POCSO Act, consent is immaterial since the survivor was 16 years of age. He submitted that the medical evidence also corroborates the evidence on record that there was penetrative sexual assault on the survivor and that the appellant had also failed to discharge the presumption cast on him under Section 29 of the POCSO Act.

5. Having heard learned counsel for the respective parties and having perused the evidence and documents, we are of the view that no interference is warranted in the impugned judgment and order dated 22nd September, 2023 for the reasons to follow.

The wife of the appellant and sister of the survivor was examined by the prosecution as PW1. PW1 has deposed that she was living with the appellant, as husband and wife since 2018 and have two minor children from the said relationship; and that



the survivor is her biological sister. PW1 has further deposed that in the year 2020, she noticed something strange in the relationship between her sister (survivor) and the appellant and finally in October, 2020 when she and her family members inquired from the survivor, she disclosed that the appellant had fetched her from school, given her an intoxicated drink in the vehicle, and, on the way taken her to a restaurant and committed penetrative sexual assault on her in the toilet of the restaurant; and on the second occasion, he committed penetrative sexual assault at the residence, during the daytime whilst PW1 was at work. PW1 on hearing the narration given by her sister i.e., the survivor, alongwith her mother decided to lodge an FIR against the appellant for having committed penetrative sexual assault on the survivor. PW1 has identified her signature on the FIR (Exhibit-P1) filed on 20.10.2020. She has further deposed that at the time of the incident, her sister (survivor) was 16 years of age.

In her cross-examination, PW1 has stated that the FIR was read over to her before she affixed her signature. She has



further stated that she noticed that her husband (appellant) and her sister were in a love relationship and that her sister was also a consenting party, however, the appellant had told her sister not to reveal anything about the physical relationship between them. PW1 has further in her cross stated, that after hearing the incident, she was angry with the actions of the appellant and accordingly, decided to lodge an FIR. She has also stated that on learning about the incident, she suffered mental trauma and had to seek medical help. She has stated that she has now forgiven the appellant. PW1 has also deposed in her cross that on the day of the first incident, which took place at Aroma Restaurant, her sister was not intoxicated.

A perusal of the cross-examination, reveals that there are no denials taken from the said witness with respect to what she has deposed in her examination-in-chief, including the fact, that her sister was 16 years of age. Infact, there is no challenge to the survivor's age.

6. The prosecution examined the victim girl, as PW2, who at the time of recording of her evidence, was aged, 17 years. PW2



in her examination-in-chief has disclosed that the appellant was her brother-in-law, being married to her elder sister and had two minor children. She further deposed that at the relevant time, she was living with her parents and was studying in Class IX, that the appellant used to drop and pick her up some times; that on 12.10.2020, the appellant picked her up from school and told her that he would take her for lunch to Aroma Restaurant; that the appellant also invited her cousin brother who was also her classmate and as such, the appellant picked them up from school on that day; that the appellant took them to Aroma Restaurant; on reaching Aroma Restaurant, food was ordered; that the appellant brought them some chocolate after which he told her that he wanted to say something to her and took her to a room which was isolated from the main restaurant; that the appellant asked the cousin to wait at the table; that inside the isolated room, the appellant gave her one chocolate and put a metal finger ring on her finger and thereafter, they proceeded to the table and had lunch; that after washing hands, her cousin brother went back to the table whereas, the appellant grabbed her hand and pulled her inside the toilet, kissed her, undressed



her, undressed himself and committed penetrative sexual assault on her; that after the incident, the appellant went back to the table, after which she cleaned the toilet and went back to the table.

PW2 also disclosed that the appellant had committed penetrative sexual assault on her on two occasions; first, in Aroma Restaurant and the second, at her sister's house. She has stated that the second incident took place in October, 2020. She has stated that the appellant had called her to his house when he was alone and committed penetrative sexual assault on her. PW2 has further disclosed that after the sexual assault i.e., penetrative sexual assault, she told the appellant that she did not want to commit the same mistake of having physical relationship with him, pursuant to which, the appellant stood up, took a blade and threatened to cut himself, to death, if she left him. According to PW2, she did not listen to him and returned home. PW2 has further deposed that she did not reveal the incidents to anyone. She has stated that after the second incident, her father noticed strange behaviour between her and



the appellant pursuant to which, a meeting was held and on inquiry, she narrated the two incidents of penetrative sexual assault by the appellant on her. She has further deposed that after narrating the incidents, she was beaten by her uncle, and that her mother and her sister (PW1) decided to lodge an FIR. She has deposed that she had given her 164 statement and has identified her signature on the same. She has also identified a photograph of the Aroma Restaurant and the area i.e., the toilet where the incident took place as well as the photograph inside her sister's house, where the second incident took place. PW2 deposed that her date of birth was 16.03.2004.

In her cross-examination, PW2 has stated that she was guilty about the incident that took place, as the appellant was her sister's husband and that her love relationship with the appellant was wrong, as he was the husband of her elder sister. She has admitted in her cross-examination that the sexual relationship took place because she was in love with the appellant. There is no cross-examination with respect to the date of birth, as deposed by the survivor. There are also no denials



with respect to what was disclosed to by PW2 in her examination-in-chief.

7. PW3 is the mother of the victim. He has stated that in October, 2020, in the wedding of one of his relatives, he noticed that the appellant and the victim girl were behaving as if they were in a relationship and were eating food together. He has further deposed that in October, 2020, when he questioned his daughter, she disclosed that she had physical relationship with the appellant pursuant to which, an FIR was lodged as against the appellant. He stated that at the time of the incident, his daughter was 16 years of age and that her date of birth was 16.03.2004. He has identified the birth certificate of his daughter which was submitted by him to the police.

In the cross-examination, he submitted that his minor victim daughter had informed him when confronted that it was a mistake and that she was dating the appellant.

8. PW4 - Dr Diamond Marwein, is the Medical and Health Officer. PW4 in his evidence has disclosed that at the relevant



time, he was posted at Nongstoin as the Medical and Health Officer. He has deposed that on 20.10.2020, the victim was brought to the Civil Hospital for medical examination by the police accompanied by her mother. He has stated that according to the survivor, on 12.10.2020, her brother-in-law picked her up from school, took her to Aroma Restaurant to have lunch with her cousin brother and after lunch, took her to the washroom and sexually assaulted her and thereafter again, on 17.10.2020, called her to his house and committed penetrative sexual assault on her. He has deposed that the medical examination was conducted eight days from the first incident and three days from the second incident. He has stated that, although on general examination, no external injuries were found, however, her hymen was found not intact.

In cross-examination, he has stated that he could not say whether the victim had given her consent.

9. The prosecution examined WP/SI, Nylla Eulalia Wanniang as PW5. She has deposed that at the relevant time, she was posted at Nongstoin Women Police Station; that on 20.10.2020,



she received a written report from PW1 to the effect, that her husband (appellant) had committed penetrative sexual assault on her minor sister, aged 16 years on 12.10.2020 and again, on 18.10.2020 at her residence. PW5 has stated that during the course of investigation, the victim was sent to the Civil Hospital for examination and that she had recorded the statements of the survivor and others and collected the birth certificate of the survivor. She has stated that the victim had stated that she was in a relationship that the appellant and as such, the relation was consensual between them. She has further deposed that on 15.11.2020, she received the statement of the complainant and the survivor as recorded under Section 164 Cr.P.C. after which, she filed charge-sheet as against the appellant.

In her cross-examination she admitted that at the time of the incident, the appellant was 21 years of age.

10. Thus, from the aforesaid, it appears that the incident of penetrative sexual assault had taken place on two dates. Although, learned Senior Counsel for the appellant submitted that it was a case of consent, as is evident from the evidence that



has come on record, it is pertinent to note, that under the POCSO Act, consent given by a child below the age of 18 years is irrelevant and immaterial.

11. The judgments relied upon by the learned Senior Counsel for the appellant are clearly distinguishable and will not apply to the case in hand.

12. It is also pertinent to note that, admittedly, the appellant was the brother-in-law of the survivor, inasmuch as, he was married to the victim's sister and had two children from the said marriage. It is in these circumstances that the facts as disclosed aforesaid will have to be considered. It is pertinent to also note, that in the 313 statement, the appellant has denied having sexually assaulted the victim or that he was in a consensual relationship with the survivor. From the facts as stated aforesaid, it appears that the appellant has completely abused the sanctity of the relationship between him and the survivor, who was his sister-in-law, aged 16 years and despite being a family man with two children, had taken advantage of the survivor and abused the relationship of trust.



13. As noted above, there is no challenge as to the date of birth of the survivor, and as such, the prosecution has proved that PW2 was a minor, at the relevant time, aged 16 years. The only argument of the learned Senior Counsel for the appellant is that it was a consensual relationship between the appellant and the survivor. Infact, a perusal of the evidence of PW2 (survivor) shows that there was no consent and that the appellant had threatened her not to disclose the incident to any person. Although, in the cross, PW2 has stated that she was in a love relationship with the appellant, there is no cross-examination vis-a-vis what was disclosed to by the PW2, in her examination-in-chief i.e., there is no challenge to the evidence of PW2.

14. Considering the aforesaid evidence on record and the fact, that the appellant (brother-in-law of the survivor) had abused the relationship of trust between him and the survivor, who is his sister-in-law, aged 16 years and had taken advantage of the survivor's young age, no interference is warranted in the impugned judgment and order convicting and sentencing the appellant as stated aforesaid.



15. The appeal is, accordingly dismissed.

16. Since, the trial court has also recommended compensation of ₹1,00,000/- to be given by the Meghalaya State Legal Services Authority to the survivor, a report to be submitted by the Secretary, District Legal Services Authority, West Khasi Hills, whether the said amount has been disbursed to her or not. The said report to be submitted before this Court within six weeks.

17. The Registry to forward forthwith a copy of this judgment and order to the Secretary, DLSA, West Khasi Hills District, Nongstoin, to enable the Secretary to submit the report.

18. Place the aforesaid appeal for recording compliance of paragraph 16 on **18th June, 2026**.

(W. Diengdoh)
Judge

(Revati Mohite Dere)
Chief Justice